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5 ATTORNEYS FOR PLAINTIFF

FILED E-filing

FEB 23 2012

99
VS
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NC

8
9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

CV 12

0916

11 RONALDO SUELLEN,

Case No.:

12 Plaintiff,

13 COMPLAINT FOR DAMAGES FOR
MERCANTILE ADJUSTMENT BUREAU,
LLC,
14 VIOLATION OF CONSUMER DEBT
Defendant. / COLLECTION LAWS

15 DEMAND FOR JURY TRIAL

16 / 15 United States Code § 1692 *et seq.*
California Civil Code § 1788 *et seq.*

17 I. INTRODUCTION

18 1. This is an action for damages, attorney fees and costs brought by an individual
consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692,
et seq. ("FDCPA"), and the Rosenthal Fair Debt Collection Practices Act, California Civil Code
§ 1788 *et seq.* ("RFDCPA") which set standards for debt collectors to prevent abusive, deceptive
and unfair collection practices.

19 II. JURISDICTION

20 2. Jurisdiction in this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1337,
and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1337.
Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

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COMPLAINT/se

RONALDO SUELLEN v. MERCANTILE
ADJUSTMENT BUREAU, LLC

III. VENUE

2 3. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b), in that
3 a substantial part of the events or omissions giving rise to the claim occurred in this judicial
4 district. Venue is also proper in this judicial district pursuant to 15 U.S.C. § 1692k(d), in that the
5 Defendant transacts business in this judicial district and the violations of law complained of
6 occurred in this judicial district.

IV. INTRADISTRICT ASSIGNMENT

8 4. This lawsuit should be assigned to the San Francisco Division of this Court
9 because a substantial part of the events or omissions which gave rise to this lawsuit occurred in
10 San Francisco County.

V. PARTIES

12 5. Plaintiff is a resident of San Francisco County, California and a high school
13 physical education teacher. Plaintiff is a "consumer" within the meaning of 15 U.S.C. §
14 1692a(3) and a "debtor" within the meaning of Cal. Civ. Code § 1788.2(h).

15 6. Defendant MERCANTILE ADJUSTMENT BUREAU, LLC (“Mercantile” and/or
16 “Defendant”) has a principal office at 6390 Main Street, Suite 160, Williamsville, NY 14221.
17 The principal purpose of Defendant is the collection of debts using the mail and telephone.
18 Defendant is a debt collector within the meaning of 15 U.S.C. § 1692a(6) and Cal. Civ. Code §
19 1788.2(c). Its President is Jefrey P. Miller.

VI. FACTUAL ALLEGATIONS

21 7. Some time ago, Chase Bank U.S.A. ("Chase," a non-party) issued a credit card to
22 Plaintiff with an account number ending in 0015.

23 8. Under the FDCPA, Chase was a creditor of Plaintiff pursuant to the definition of a
24 creditor under 15 U.S.C. § 1692a(4), the FDCPA, which states:

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

1 . 9. Plaintiff Suellen used the funds to purchase consumer goods for his personal
2 and family needs.

3 . 10. The extension of credit by Chase to Plaintiff created an obligation of Plaintiff to
4 pay money to Chase, i.e. a "debt" owed by Plaintiff to Chase. As stated at 15 U.S.C. § 1692a(5):

5 **(5) The term "debt" means any obligation or alleged obligation of a consumer
6 to pay money arising out of a transaction in which the money, property,
7 insurance, or services which are the subject of the transaction are primarily for
personal, family, or household purposes, whether or not such obligation has
been reduced to judgment.**

8 . 11. Plaintiff defaulted on the debt and Chase assigned the debt to various debt
9 collectors. At 15 U.S.C. § 1692a(6) it is stated:

10 **(6) The term "debt collector" means any person who uses any instrumentality of
11 interstate commerce or the mails in any business the principal purpose of which
12 is the collection of any debts...owed or due or asserted to be owed or due
another...**

13 . 12. Sometime unknown to Plaintiff, the defaulted debt was purchased by Equable
14 Ascent Financial, an entity described by Defendant as the "Current Creditor" (See Exhibit A).
15 That statement was false.

16 . 13. Plaintiff had not received any funds from Equable or credit extension from it.
17 Equable was not a creditor. It was a debt buyer who hired Defendant to collect the debt.

18 . 14. It is established that "as to a specific debt, one cannot be both a creditor
19 and debt collector as defined in the FDCPA because these terms are mutually exclusive." F.T.C.
20 v. Check Investor, 502 F.3d 159, 173 (3d Cir. 2007), cert denied 129 S.Ct. 569 (2008).

21 . 15. The true facts when Defendant sent its collection letter should have stated at the
22 first paragraph:

23 **This office represents Equable Ascent Financial, a debt buyer, who
24 purchased your account 0015 with a balance of \$4,180.51 from Chase Bank
USA. Hereafter, all payments on the account must be made to Mercantile
25 Adjustment Bureau, LLC, the debt collector hired by Equable who now
owns the account.**

26 . 16. Defendant's conduct in making the representation at Exhibit A was done
27 intentionally and knowingly. Defendant's conduct was unlawful and violated the federal and
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state law as hereafter stated.

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3 **V. CAUSE OF ACTIONS**
VIOLATION OF FDCPA AND CAFDCPA AGAINST DEFENDANT

4 **COUNT I**

5 **(Violation of CAFDCPA: False Representation as to Debt Collector Being a Creditor)**

6 17. Plaintiff incorporates the foregoing paragraphs as though fully set forth hereto.

7 18. Defendant violated 15 U.S.C. §§ 1692e, 1692e2(A) and 1692e(10) incorporated
into California law by Cal. Civ. Code § 1788.17.

8 **COUNT II**

9 **(Violation of FDCPA: False Representation as to Plaintiff's Creditor)**

10 19. Plaintiff incorporates the foregoing paragraphs as though fully set forth hereto.

11 20. Defendant violated 15 U.S.C. §§ 1692e, 1692e2(A) and e(10) by the false,
deceptive and misleading representation of Equable as a creditor.

12 **VII. REQUEST FOR RELIEF**

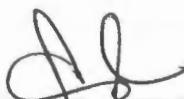
13 WHEREFORE, Plaintiff respectfully prays that relief be granted as follows:

14 A. That judgment in favor of Plaintiff be entered against Defendant on Count I and II
for maximum statutory damages pursuant to 15 U.S.C. § 1692k and Cal. Civ. Code § 1788.30;

15 B. That the Court award costs and reasonable attorney's fees and litigation expenses
pursuant to 15 U.S.C. § 1692k and Cal. Civ. Code § 1788.30;

16 C. That the Court grant such other and further relief as may be just and proper.

17 Dated: 2-22-2012

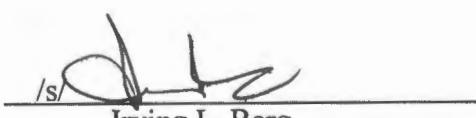


18 Irving L. Berg

20 **VIII. JURY DEMAND**

21 Plaintiff hereby demands that this case be tried before a jury.

22 Dated: 2-22-2012


/s/

23 Irving L. Berg

24 COMPLAINT/se

6941 Indian Drive East
Santon, NY 14132-9097



January 17, 2012

Secure online payment can be made at:
www.mercantilewebpymt.com Pass Phrase: 94881

CD01

A-01-ZOW-AM-16958-74

RONALDO SUELEN
PO BOX 16332
SAN FRANCISCO CA 94116-0332



MERCANTILE
Innovative Solutions, Exceptional Results

Toll Free #: 1-866-809-7506

Account Number:	4185867830670015
Reference Number:	17716562
Amount Enclosed: \$	

Make Check Payable to:



MERCANTILE ADJUSTMENT BUREAU, LLC
PO BOX 9016
WILLIAMSVILLE NY 14231-9016

PLEASE DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT

January 17, 2012

RONALDO SUELEN
PO BOX 16332
SAN FRANCISCO CA 94116-0332

ACCOUNT NO: 4185867830670015
REFERENCE NO: 17716562

PREVIOUS CREDITOR: CHASE BANK USA, N.A (WAMU)
CURRENT CREDITOR: EQUABLE ASCENT FINANCIAL
LLC
BALANCE: \$4,180.51

Your account owed to EQUABLE ASCENT FINANCIAL LLC has been listed with our office for collection. The entire balance of \$4,180.51 is due and payable.

Send the balance due to this office.



MERCANTILE ADJUSTMENT BUREAU, LLC
1-866-809-7506

OFFICE HOURS: MON - THURS 8 AM - 9 PM,
FRI 8 AM - 5 PM EST

Please send payments or correspondence to MERCANTILE ADJUSTMENT BUREAU, LLC, PO BOX 9016, WILLIAMSVILLE NY 14231-9016.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume the debt is valid. If you notify this office in writing within 30 days from receiving this notice, this office will: obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you notify this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

Calls to or from this company may be monitored or recorded for quality assurance purposes.

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.



